Subchapter NN – Deepwater Ports Temporary Interim Rule
Docket No.: USCG-1998-3884
Comments of the Minerals Management Service
01 July 2004

MMS General Remarks and Overarching Concerns

The Temporary Interim Rule still fails to address:

a. Need for analysis of impacts of ports on oil and gas exploration, development, and production.
b. Guidance/standards on the establishment of areas to be avoided and vessel routes.
c. Increased risks of allisions of port tankers and vessels with OCS facilities and requirements for hazards analysis.
d. Port applications for MMS-regulated facilities and the need for DPP and the concurrent review phases.
e. Requirements related to commingling of imported gas and metering.
f. Conflicts between the DPA and OCSLA when existing rights are violated.

As a result of these omissions, several entire sections do not provide an applicant with sufficient information to submit a complete application.

PART 148 – DEEPWATER PORTS: GENERAL

Subpart A – General

148.3 – Add sentence at end of paragraph that indicates responsibilities delegated to EPA, FERC, DOC, DOI, COE, DOS, DOD, etc. articulated in the Deepwater Ports Act, as amended. Write-up suggests that only DOT and DHS have jurisdiction over all aspects of a deepwater port, which is incorrect.

148.5 – Modify or add the following definitions:

"Application" – definition should be revised to include revision to initial application and applications to modify or repair deepwater port components.

"Approved" – the definition may be misconstrued that only the Commandant has approval authority when the Administrator of MARAD has a much larger role in approving all parts of the application.

"Deepwater port" – refine to exclude structures or operations that impact the seafloor and subsoil of the OCS, including existing caverns in salt domes, caverns to be leached in salt domes, operations involved in solution mining operations, equipment and tubulars associated with injection or production of liquid and/or gas.

"Metering platform" – a metering platform measures the amount of product moving through a flowline and does not necessarily "control the rate of transfer" as indicated in the rule.

"Natural gas liquids" – need definition if Coast Guard is suggesting that NGLs are neither oil or gas.

"Applicant" means a "person" that is the owner of a proposed deepwater port and that is applying for a license to own, construct, and operate a deepwater port. Under Subpart – B Application for a License 148.105 (c) (2) (3) (4) and (5), Applicant is referred to as a group, state, Private Corporation, partnerships, etc.

148 Subpart B – Application for a License

MMS suggests adding into the rule specific references to bonding and financial responsibility requirements. Even though the financial issues are handled by MARAD, the USCG rules should cross reference the bonding and financial responsibility rules once MARAD develops them, since the lay person would not know that both agencies are involved when reading the USCG rules.

Please ensure that this subpart or other subparts addresses pipeline design, construction, standards, operation, maintenance and decommissioning.

148.105 (k)(1), (2) *Identification of lease block; (s)(1), (2), (3), (4), (6) Information on offshore pipelines; (u)(5) Information on miscellaneous components; (v) Construction procedures.* These sections address pipeline technical information which is currently required to be submitted in the license application. The information currently required is not sufficient to perform an adequate technical review. There is no requirement that the information meet specific technical or regulatory criteria and the level of detail is significantly less than what would be required for other OCS pipelines in accordance with 49 CFR 192 and 195 and 30 CFR 250 Subpart J.

Information similar to that included in applications submitted in accordance with the aforementioned regulations should be required as part of the license application. This would insure that deepwater port pipelines meet the same design and installation requirements as other OCS pipelines.

The MMS, in coordination with Research and Special Programs Administration (Office of Pipeline Safety), could provide comments and recommendations concerning the detailed pipeline technical information that should be included in the license application.

A different approach to solving the need for additional information would be to require the applicant to submit applications to the MMS to obtain approvals in accordance with 49 CFR 192 and 195 and 30 CFR 250 Subpart J for pipeline installations considered to be part of the deepwater port. Obtaining these approvals could be a condition of the license. The applicant could still be required to provide the general pipeline information requested

in the interim rule. This information would provide an overview of the design and operating scenario for the pipeline(s). Any significant revisions such as changes to the number of pipelines or changes to the interconnecting pipelines should require USCG approval. Submitting a separate pipeline application would be a more practical approach since the detailed pipeline design work and specific negotiations with interconnecting pipeline companies will likely occur after the license is granted.

Section 148.105(x) - The rule could be improved with further guidance regarding what the applicant should submit about environmental information and protection.

The rule could include references to 250.204(b)(8)(v)(B through H) and specify that the applicant include "A narrative description of the existing environment with an emphasis placed on those environmental values that could be affected by the proposed action." Additionally, the applicant should provide an assessment per 250.204(b)(11) "An assessment of the effects on the environment expected to occur as a result of implementation of the plan."

The MMS's concerns with the measurement and commingling approvals for any impacted commingling systems, measurement equipment inspections, the submission and approval of a commingling application (when necessary), and reporting should continue to be included as conditions of approval in the deepwater port license.

148.105 (s)(5) - This should be expanded to read: "A description of the metering system to be used to measure flow rate. Include, as a minimum, the number, size, make, model, and type of the meter(s); the make and model of the gas recorder(s); a description of the sampling devices; and the pipeline system(s) into which these hydrocarbons will be delivered". The MMS wants to ensure that the same quality of metering systems that are currently required for offshore leases are used to meter LNG gas before it is commingled with OCS gas.

148.105 (f) – also provide information if port will be open or closed access.

148.105(k) "Identification of lease block" as well as 148.737 "what are the other critical criteria that must be evaluated." -- USCG needs to add to the rule an explicit requirement for data and discussion about any mineral resources and potential for minerals development at the port site, plus an analysis of whether there will be any restriction on mineral development due to port activities and development. In some cases, where minerals are currently produced near the site, a detailed explanation of how operations will be consistent ought to be required. The rule text ought to make clear that a review of mineral resources at the port is required even in areas of the OCS where mineral development is currently restricted, such as OCS moratoria areas.

148.106 (bb) "additional federal authorizations" - USCG needs to add to the rule a requirement for listing any OCS permits and reviews that will be required of the MMS and explaining how the information needed for any such OCS permit or review will be obtained and provided to MMS. The license is conditional upon any needed OCS

permits or reviews. An instance is the permits needed for the Clearwater (Crystal Energy) proposal.

148.105 (g)(2)(iii) – presumption should not be that the pipeline will be left in place. Costs estimates should be provided for pipeline removal. Waiver of removal requirements would be considered during decommissioning operations.

148.105 (5) – add natural gas liquids

148.105 (5)(k) – Plat should be certified by Professional Surveyor. Note that plats of proposed facilities should be obtained as well as "as-built" plats, which often differ. Should also follow MMS requirements for obtaining pipeline data digitally.

148.105 (m)(1)(kk) – Information on the vessel routes from the existing Safety Fairway onto a Recommended Route to the port should be included. Applicant should provide information on proximity of fixed and floating structures in proximity to vessel routing and methods that will be used to avoid collisions while underway or in the event of engine trouble.

148.105 (r) – Change title to "Information on dedicated fixed offshore components" to distinguish this section from that needed to establish requirements for reuse of refurbished facilities and in the co-location of deepwater ports on existing operating oil and gas facilities. Separate similar sections should be developed for "Information on Reused Fixed Offshore Components" and "Information for Co-Located Fixed Offshore Components".

148.105 (s) – Section needs to be added requiring that the applicant provide information on the pipeline(s) that the port pipeline(s) will be connected to, including a detailed analysis that shows throughput and capacity rates of all pipelines involved in transport of product to shore and how the deepwater port injection rates will impact overall throughputs and pipeline and/or trunkline capacities.

148.108 (c) – It should be clear that agencies may request <u>any time</u> during the application review process, not just within 30 days of application receipt.

148.108 (d)(1) – In cases where MMS-regulated facilities are impacted by a port application, the Commandant would not determine whether the data was needed or not as requests would not fall under DHS/DOT jurisdiction.

148.110 – What about emergency shut down systems and redundant protection where the pipeline operating pressure exceeds the MAOP. OPS has specific regulations that should be referenced here.

148.10 – The port operations manual should also include sections that deal with emergencies on ports that are co-located with MMS-regulated facilities.

148.115 – For all deepwater ports located in the Outer Continental Shelf, provide the Mineral Management Service Headquarters with one hard copy and one electronic version, and the MMS Region having jurisdiction over the proposed port with five hard copies and one electronic version.

148.209 – This section should be rewritten and should provide exact data on agencies involved and number of copies to be delivered. This section may duplicate direction in 148.115.

148.209 - There is an implication that MMS's OCS jurisdiction requiring pipeline applications may apply to pipelines considered to be part of the deepwater port. The applicant should be provided clarification as to what jurisdiction MMS has over deepwater port pipelines in relation to those of the Office of Pipeline Safety.

148.211 – State that in certain cases where revisions to application are sufficiently numerous and/or complex, the applicant will be required to submit a totally revised, new application.

148.276 (c) – Section should state that a Record of Decision will be issued to make the distinction between the ROD and the actual license that would be issued at a later date. Thought should be given to adding a section (d) that discusses what the ROD will include, especially mitigations and conditions of approval developed by MMS and submitted to the Coast Guard.

148.283 – Section is unclear as to whether this is speaking to an oil port or all ports.

148 - Subpart D - Licenses

MMS suggests adding in an applicable fee structure into the rule. The section should include a fee for any of these actions tied to the Federal costs of processing these actions.

148.305 – This section should also clearly state that the license will include all mitigation and conditions of approval developed by MMS, which should also have been included in the Record of Decision.

148.310 – Conditions should also be established that: a) the license becomes null and void if port construction does not commence within five years, b) the port ceases operation for more than two years. Without such stipulations, the port owner could hold the license indefinitely, limiting access to locations appropriate to ports or oil and gas drilling activity.

148.315 - Add the following subsection: (c) A request to amend, transfer, or reinstate a license must be accompanied by the payment of a $###,### fee. This fee will be updated annually by the CPI-U beginning October 1, 2006.

This subpart should additionally address the eventual decommissioning and site restoration of Ports constructed under this Act. The only reference to decommissioning is in the Subpart G—Environmental Review Criteria for Ports. Suggested Section and language additions could be as follows to address decommissioning of the Port:

148.325 - How long do I have to restore the Port site after decommissioning or revocation?
MARAD will require you to provide a site restoration plan within 2 years of decommissioning of the Port or the revocation of its license.

148.330 - Must I guarantee site restoration?
(a) Yes, MARAD requires demonstration of your financial capability to restore the Port site. Your unencumbered assets should be equal to 5 times the expected site clearance and decommissioning costs. You may demonstrate your financial capability through audited financial statements, Surety Bonds, Corporate Guarantees, or other financial instruments approved by MARAD.
(b) If you use a Surety Bond, the Surety must be on the Treasury Departments' approved list of Sureties (Treasury Circular 570).

148.400 (2) – To determine if the port will "Interfere with authorized uses of the Outer Continental Shelf" a thorough analysis of impacts to oil and gas operations due to the impact of the port on existing infrastructure and the introduction of additional vessel traffic must be conducted.

148.400 – Information on consultation processes with the MMS Geological and Geophysical staff should be included here.

148.405 - No depth limits are set on sediment testing (only "… sediment sampling of a limited nature …."). In order to prevent incidents associated with potential shallow geological hazards, it is recommended that the USCG establish a maximum depth of penetration. If penetration of the seabed is required beyond this depth, the USCG will consider the testing after consultation with Federal and State agencies.

148.700 – The applicant must also submit all subsequent amendments to the application or additional information to complete the application to each cooperating agency involved in the application review/approval process.

148.700 - The Research and Special Programs Administration (Office of Pipeline Safety) does not require applications or issue permits. An applicant may need to interface with the MMS in other ways besides just the pipeline matters described in the rule. For example, once a Deepwater Port application has been received by the USCG, the MMS may want to include an Information to Lessees (ITL) component in its Proposed and/or Final Notice of Sale for OCS leases thus sharing information on the proposed terminal, other structures, and its pipelines. This notice will inform prospective bidders on OCS leases about the proposed deepwater port facility and its potential effects on un-leased blocks. New deepwater ports on the OCS will restrict surface occupancy for natural gas,

oil, and other mineral exploration and production activities on leased as well as currently un-leased acreage. These restrictions to surface occupancy may result in a reduction to the economic value of energy resources or perhaps completely restrict access to potential resources that may exist below the no occupancy zone. The MMS may have discussions with the applicant in determining the "fair market value" of lands impacted by the proposed deepwater port including suggested vessel routes to the terminal. For all pipelines that will commingle LNG production with OCS production, the MMS will require the applicant to submit the metering and surface commingling procedures for review and approval as a condition in the deepwater port license. In cases where an OCS oil and gas facilities are proposed as the foundation for LNG facilities, the MMS would require the operator to submit a revision to their approved Development and Production Plan, and the revision would be subject to the applicable parts of 30 CFR Part 250.

148.707 - This section is supposed to present the "environmental review criteria" for evaluating a proposed deepwater port. It is not clear what these criteria are. The section states that the application will be reviewed for effects on environmental resources. However, it would be useful to the applicant and the public to know what the criteria of review actually are. Section 148.705 (a) states that the criteria "are established by general consensus of expertise, scientific opinion, public interest, and institutional requirements, such as laws and regulations established for the protection of the environment." It appears that the Coast Guard will use their judgment on these issues, as it relates to the environmental impacts of the action – and this will form their criteria at the time of a given application. However, any NEPA document that is prepared for the applications, should clearly state the criteria to determine a significant impact for each environmental resource that may be affected more clearly than these regulations. One methodology that would assist the Coast Guard in their NEPA documentation is to develop significance criteria for each environmental resource and indicate the impact level at which mitigation would be required.

148.707 - Restate in the first paragraph of this section that the environmental evaluation process must also be applied to the fabrication phase of the proposed action and alternatives. Substantial adverse impacts may be associated with the fabrication site. For example, building a graving dock for the fabrication of a concrete, gravity-based deepwater port terminal would require substantial earth work at the shore-side construction yard. These impacts may be particularly significant if the construction site is located within a state's coastal zone or in other wetlands area. The regulations should note that similar environmental information must be available on the applicant's preferred scenario and for each of the alternative investigated. This will allow the USCG and MARAD to properly choose which alternative best serves the intent of the Deepwater Ports Act. (This comment is also germane to 33 CFR 148.720).

148.707(a) - Include threatened species with the endangered species listing of effects on the environment. Also add impacts to the sea bottom [for the terminal and pipeline(s)]. Potential impacts to fisheries go beyond just those associated with essential fish habitat.

148.710(b) – Clarify that this applies only to oil ports.

148.720 – Add (p) Minimizes risks to existing and future oil and gas exploration, development, and production activities, (q) Minimizes impacts to existing energy infrastructure, (r) Minimizes impacts to future oil and gas exploration, development, and production activities, (s) Determines the optimal distance from existing fairways to the port

Section 148.715 (a) and (b) - NEPA, Section 40 CFR 1508.20, requires agencies to avoid, minimize, rectify, reduce or eliminate, or compensate adverse impacts. This section should be revised to include rectify, reduce, eliminate or compensate impacts.

148.720(a) - The USCG must consider both direct and indirect effects to the environment. This is a requirement of the NEPA and its implementing regulations. Both the USCG and MARAD must also consider the cumulative effects for the proposed deepwater port on the environment.

148.720(l) - Include exploration activities with the oil or gas production or transportation listing of activities that should be considered for minimizing displacement from deepwater port activities.

148.725 - It is essential that design, construction and operational criteria include minimizing impacts to the environment. For example, minimizing impacts to essential fish habitat and fishery stocks, and minimizing air emissions should be included in the criteria. It is also essential that proposed Deepwater Port activities minimize impacts to oil and gas leasing activities; exploration, development, and production activities; and pipeline and structures. Non-oil and gas activities such as sand removal on the OCS should be included in activities that must be considered. The vessel routing and anchoring (where needed) may adversely affect un-leased and currently leased blocks on the OCS.

PART 149 – DEEPWATER PORTS: DESIGN, CONSTRUCTION, AND EQUIPMENT

The MMS recommends that all deepwater port facilities be designed similarly to API 14C & 2A methodology where component safety analysis checklists are conducted. In systems where DOI gas is put into the deepwater port, DOI safety requirements should be used such as 30 CFR 250, Subpart H and Subpart J

149.15 – Provisions must be added for submitting alterations and modifications to MMS in cases where port operations are co-located on MMS-regulated oil and gas facilities. Revisions must be submitted to the Regional Supervisor under a Development and Production Plan permit. Additionally, clarification needs to be provided regarding repair and modifications to pipelines.

149.620 - The MMS should receive copy of the construction drawings and be allowed to evaluate and make comments on the proposed structure when it is a fixed facility that is

being newly constructed, modified, or repaired, or when an MMS-regulated fixed facility is being modified to accommodate a deepwater port. This would insure that deepwater port structures meet the same design and installation requirements as all other OCS platforms.

149.625 - As stated in the comment for 149.620, deepwater port structures should meet the same design and installation requirements as other OCS platforms thus they should confirm to 30 CFR 250 Subpart I.

PART 150 – DEEPWATER PORTS: OPERATIONS

150.15 – Clarification needs to be provided related to the Operations Manual as it relates to ports co-located on MMS-regulated facilities.

150.15(k)(8) – Information should be added on normal operating pressures, setting for pressure safety highs and lows, levels safety highs and lows, temperature sensing elements, and other details on the systems and methods to be used to determine all types of operational upsets and the actions that will be taken to control them.
150.20 – In cases where the port is co-located with an MMS-regulated facility, one copy of the final and all subsequent amendments must be provided to the MMS Headquarters, and two copies of the final and all subsequent amendments to the MMS Region having oversight of the area in which the port is located.

150.50 – In cases where the port is co-located with an MMS-regulated facility, the Oil Spill Response Plan must be reviewed and approved by MMS. Current law states the MMS is responsible for Oil Spill Plans for all facilities that handle, store, or transport oil and which are located seaward of the coastline. As liquid hydrocarbons will be stripped from LNG during regasification, spill plans would be under the jurisdiction of MMS. Only one gas transportation pipeline in the Gulf of Mexico has been deemed "dry" and thus not requiring an OSRP. All other transporters of natural gas must produce OSRPs.

150.100 - The MMS currently has responsibility, through an agreement with DOT, to inspect "DOT platforms". Based on this section, MMS will not have jurisdiction to inspect deepwater port platforms, conflicting with current policy. State that the MMS will the ability to inspect the gas meters to ensure that they are properly calibrated and that the seals are working correctly.

150-200 thru 385 – Entire section needs to be rewritten to clarify the standards for, and the size and shape of safety zones, anchorage areas, and areas to be avoided. Regulatory basis for each zone or area needs to be stated. Restrictions should be clearly stated. All of these requirements need to be clarified for ports located in unleased blocks and leased blocks. Note that table 150.380(a) indicates that mobile drilling operations and erection of structures is not allowed in anchorage areas and areas to be avoided. In cases involving leased operations, this is not consistent with legal agreement between the operator and the Federal government.

150.435 – For port co-located with an MMS-regulated facility, need to add section that transfer can not take place when activities associated with oil and gas operations and maintenance pose a safety hazard.

150.815 – If casualties occurs on an MMS-regulated facility, the appropriate MMS District office must be notified immediately, followed by written notification requirements.

150.900 thru 930 - Entire section needs to be rewritten to clarify the standards for, and the size and shape of safety zones, anchorage areas, and areas to be avoided. Regulatory basis for each zone or area needs to be stated. Restrictions should be clearly stated. All of these requirements need to be clarified for ports located in unleased blocks and leased blocks. Note that table 150.910 indicates that no installations, structures, or activities other than those associated with the port will be allowed. In cases involving leased operations, this is not consistent with legal agreement between the operator and the Federal government. Provisions need to be made for input from Federal agencies, affected lease holders, and the public before such areas and zones are established and forwarded to international organizations for approval. Standards for the develop of all areas and zones are mandatory.